

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:24-cv-22149-LEIBOWITZ

TUSHBABY, INC.,

*Plaintiff,*

*v.*

FLEEROSE,

*Defendant.*

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**ORDER**

**THIS CAUSE** is before the Court on Defendant’s unopposed Motion to Consolidate [ECF No. 22] (the “Motion”), filed on October 16, 2024. In the Motion, Defendant asks the Court to consolidate this declaratory judgment action with previously consolidated copyright infringement actions – *Tushbaby, Inc. v. The Corporations, Limited Liability Companies, and Unincorporated Associations Identified on Schedule A*, No. 1:24-cv-21136-LEIBOWITZ (S.D. Fla.) (hereinafter “consolidated action”).

The district court has “inherent managerial power” to “control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Young v. City of Augusta, Ga. Through DeVaney*, 59 F.3d 1160, 1168 (11th Cir. 1995) (citation omitted). Under Federal Rule of Civil Procedure 42, a district court “may” consolidate cases where they “involve a common question of law or fact.” Fed. R. Civ. P. 42(a)(2); see *Newman v. Eagle Bldg. Techs.*, 209 F.R.D. 499, 501 (S.D. Fla. 2002). These cases share both.

In the instant case, Plaintiff seeks a declaratory judgment that it did not infringe upon Defendant’s patent [ECF No. 1]. Infringement, albeit copyright infringement, is also at issue in Defendant’s counterclaims asserted in the consolidated action. See *Tushbaby, Inc. v. The Corporations, Limited Liability Companies, and Unincorporated Associations*, No. 1:24-cv-21136-LEIBOWITZ (S.D. Fla.),

Answer to Second Amended Complaint, ECF No. 90 at 21–22 (Sept. 16, 2024). Even though the legal theory of infringement differs in the actions, the product alleged to be infringed is the same. Further, Plaintiff's factual allegations in both complaints are very similar. *Compare* ECF No. 1 *with* ECF No. 76 (consolidated case). And, finally, both cases involve the same Plaintiff, the same Defendant, and the same object of their infringement dispute. Consequently, consolidation is appropriate. Accordingly, and upon due consideration, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Motion [ECF No. 22] is **GRANTED**.
2. **The Clerk of Court** shall CONSOLIDATE this case *Tushbaby, Inc. v. Fleerose*, No. 1:24-cv-22149-LEIBOWITZ (S.D. Fla.) with consolidated case *Tushbaby, Inc. v. The Corporations, Limited Liability Companies, and Unincorporated Associations Identified on Schedule A*, No. 1:24-cv-21136-LEIBOWITZ (S.D. Fla.). All future pleadings, motions, or other papers shall be filed in case number 1:24-cv-21136-LEIBOWITZ and bear only the caption of that case.
3. All motions pending in case number 1:24-cv-22149 are **DENIED as moot** and must be re-filed in case number 1:24-cv-21136.
4. **The Clerk of Court** is directed to CLOSE this case (1:24-cv-22149).

**DONE AND ORDERED** in the Southern District of Florida on October 17, 2024.

  
DAVID S. LEIBOWITZ  
UNITED STATES DISTRICT JUDGE

cc: counsel of record